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FEDERAL COMMUNICATIONS COMMISSION  
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**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of

Implementation of Section 309(j)  
of the Communications Act --  
Competitive Bidding

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PP Docket No. 93-253

DOCKET FILE COPY ORIGINAL

TO: The Commission

**GO COMMUNICATIONS CORPORATION OPPOSITION  
TO RADIOFONE, INC. REQUEST FOR STAY**

GO Communications Corporation ("GO"), by its attorneys, hereby respectfully submits its Opposition to the Radiofone, Inc. ("Radiofone") Request for Stay filed on April 24, 1995. When the Federal Communications Commission ("FCC" or "Commission") adopted its Third Memorandum Opinion and Order in GEN Docket No. 90-314<sup>1/</sup> denying Radiofone's petition for reconsideration of the cellular/PCS cross-ownership rules, Radiofone sought judicial review of that Third MO&O before the United States Court of Appeals for the Sixth Circuit.<sup>2/</sup> In its April 24 Request for Stay, Radiofone asks the FCC to stay the effectiveness of its auction rules for broadband Personal Communications Service ("PCS")

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1/ See Third Memorandum Opinion and Order, Amendment of the Commission's Rules to Establish New Personal Communications Services, 9 FCC Rcd 6908 (1994) ("Third MO&O").

2/ See Radiofone, Inc. v. Federal Communications Commission and the United States of America, No. 95-3238 (6th Cir. docketed Mar. 7, 1995) (transferred from the D.C. Circuit Court of Appeals).

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licenses, and especially to postpone all PCS auctions, until the Sixth Circuit has ruled on Radiofone's Petition for Review.<sup>3/</sup>

Radiofone's request cannot and must not be granted. Radiofone asks for a stay of the effectiveness of the competitive bidding rules adopted in PP Docket No. 93-253, but its true interest lies in changing the PCS/cellular cross-ownership rules adopted in the Second Report and Order in GEN Docket No. 90-314<sup>4/</sup> and affirmed in the Third Memorandum Opinion and Order in that Docket.<sup>5/</sup> Its proper recourse to obtain a change of the rules adopted in GEN Docket No. 90-314 lies in petitioning for review of the rule makings in that docket. Radiofone should not be allowed to threaten the Commission's successful implementation of its competitive bidding programs established in PP Docket No. 93-253. Radiofone is merely attempting to hold the Commission's rule makings in other dockets, such as the entire competitive bidding docket, hostage to its complaints regarding the PCS service rules. Its attempt is in fact shamelessly repetitive in light of the Commission's many prior determinations that the cross-ownership rules serve the public interest<sup>6/</sup> and the

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3/ See Radiofone Request for Stay at 2.

4/ See Second Report and Order, GEN Docket No. 90-314, 8 FCC Rcd 7700, ¶¶ 101-110 (1993) ("Second Report and Order").

5/ See Third MO&O, *supra* n. 1, ¶¶ 17-34.

6/ See, e.g., Second Report and Order, *supra*, ¶¶ 101-110; Memorandum Opinion and Order, GEN Docket No. 90-314, FCC 94-144, rel. June 13, 1994, summarized 59 FR 32820 (June 24, 1994), ¶¶ 98-122 (1994); Third Report and Order, Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, 9 FCC Rcd 7988, ¶¶ 16-19, 238-283 (1994) ("CMRS Third Report and Order") (capping at 45 MHz the total amount of PCS, cellular, and SMR spectrum in which an entity may have an attributable interest in any geographic area, and adopting a 20 percent cross-ownership attribution rule for licensees other than designated entities); Fourth Report and Order, GN Docket No. 93-252, FCC 94-270, 59 FR 61828 (1994) ("CMRS Fourth Report and Order"). In the CMRS Fourth Report and Order, e.g., the Commission stated:

[T]o maximize competition among those who are granted licenses . . . the

(continued...)

current litigation regarding that issue, which is properly before the Court rather than the FCC.<sup>7/</sup>

Assuming, arguendo, that Radiofone's cross-ownership claim had any merit, it would be just as applicable to the A/B Block auction as it would to the C or F Block auctions. Radiofone should have clearly requested that the Commission stay the effectiveness of all of its PCS competitive bidding rules, rather than delaying the C and F Block auctions alone. If the Commission grants any relief to Radiofone regarding the C Block, it would be manifestly absurd and unjust not to also stay the licensing of the A and B Block auction winners. It would be unfair to designated entities, and indeed to Radiofone if it succeeds with this Request or its lawsuit, if the competitive bidding rules are somehow divided, such that some remain effective and the effects of others are stayed.

In order to return to an expeditious schedule for continued competitive bidding, to reassure PCS designated entities and the investment community that the Commission's intent to auction the C Block is real, and to avoid leading parties to seek a stay of CMRS auctions in order to alter the results of petitions for review of different proceedings,

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6/(...continued)

Commission has taken steps to prevent excessive aggregation of spectrum through our various spectrum caps and cross-ownership rules. The goal of these limitations is to ensure that a single entity will not have the ability to influence or control a large portion of the available mobile wireless spectrum and thereby undermine competitive pricing for wireless services.

Id., ¶ 3.

<sup>7/</sup> See 47 U.S.C. § 402(a) (proceedings to enjoin or set aside Commission orders shall be brought under Title 28 of the United States Code); 28 U.S.C. § 2349(a) (court of appeals has jurisdiction over petition to review).

GO asks the Commission to deny Radiofone's Request for Stay and to adopt a fast track toward the C Block PCS auction.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**


I, Bridget Y. Monroe, a secretary with the law firm of Verner, Liipfert, Bernhard, McPherson and Hand, hereby certify that on this 2nd day of May, 1995, a copy of "GO Communications Corporation Opposition to Radiofone, Inc. Request for Stay" was mailed, U.S. first-class postage prepaid to the following persons:

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